TURKEY

In 1998, the U.S. trade surplus with Turkey rose to 967 million, down from $1.4 billion in 1997. U.S. merchandise exports to Turkey were $ 3.5 billion, a decrease of $27 mbillion from the level of exports in 1997. Turkey was the United States' 34th largest export market in 1998. U.S. merchandise imports from Turkey were $2.5 billion, up $427 million from 1997. The stock of U.S. foreign direct investment in Turkey was $1.1 billion in 1997. Such investment was concentrated primarily in the manufacturing, petroleum, and financial sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

The introduction of Turkey's customs union with the European Union in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The weighted rate of protection for industrial products from the U.S. and other third countries dropped from 11 to 6 percent with the introduction of the customs union. Higher transitional protection for imports of sensitive goods (including automobiles, leather and ceramics) from third countries are being phased out over a five year period. A ten percent reduction in these duties in 1998 reduced the average rate of protection to 5.3 percent. By 2000, this rate is set to fall to 4 percent. Further reductions in the general tariff level are not likely to significantly affect U.S. exports.

The customs union has helped the EU consolidate its existing dominance in trade relations with Turkey. In 1997, the EU supplied 52 percent of Turkey's imports and received 50 percent of its exports. Bilateral trade with the United States increased 21.5 percent between 1995 and 1997, with exports growing 16.8 ($621 million) and imports 33.5 percent ($507 million). In the first ten months of 1998, the share of U.S. goods in total imports was 8.8 percent (Versus 9.0 percent in 1997), while EU exports accounted for 51.9 percent (versus 52 percent in 1997).

Turkey maintains high tariff protection on many agricultural and food products. Because of generous subsidies and high support prices far above world market levels, Turkey recently adopted high, although WTO-consistent, applied tariffs on grains and oilseeds to discourage imports and to encourage consumption of local crops. Since 1996, Turkey has raised its applied tariffs on milling wheat (from 3 to 55 percent), durum wheat (3 to 50 percent), corn (3 to 60 percent), sorghum (3 to 60 percent), barley (3 to 85 percent), and sunflower seed (3 to 29 percent). These tariffs have adversely affected U.S. exports to Turkey. Improved market access for U.S. bulk commodities would help the growth and modernization of the Turkish livestock and poultry sectors and would reduce inflationary pressures in Turkey's economy. For example, Turkish beef prices recorded the second highest increase among all sectors during 1998, forcing consumers to pay the world's highest beef prices. These high beef prices also support inflated prices for other meats, in particular, poultry.

The Turkish Government charges high import duties, plus additional domestic taxes and charges, on imported alcoholic beverages. The national drink (Raki) continues to dominate the market for hard alcohol, but market opportunities for U.S. wine and beer exports exist. Tariffs on these products are high, the import process is cumbersome, and U.S. companies have complained about the need to open letters of credit for imports through TEKEL, the alcoholic beverage monopoly.

Turkey also applies nontariff barriers to agricultural trade. From time to time, the Turkish Government has delayed issuance of grain and oilseed import permits, temporarily prohibiting imports. A more serious barrier is the long-standing livestock import ban. In August 1996, responding to an outbreak of foot and mouth disease (FMD), allegedly introduced by imported cattle, Turkey imposed a "temporary" ban on cattle and beef imports. Subsequently, the ban has been renewed every three months. Although there has been no instance of FMD in the United States for over 70 years, the Turkish Government has failed to fulfill its promise to lift its livestock import ban. On December 31, the government issued a decree setting up a livestock development program, under which qualified Turkish farmers will be allowed to import breeder cattle. The Turkish Government has yet to finalize the details of the program.

Eliminating high tariffs and nontariff barriers to agricultural trade could open up markets in Turkey worth between $100 and $500 million annually for U.S. grain exporters and over $ 50 million annually for U.S. livestock exporters.

Import Licenses

The Government of Turkey requires certification that quality standards are met for importation of human and veterinary drugs and certain foodstuffs. Import certificates are necessary for most products requiring after-sales services, including telecommunications and electronic equipment and vehicles. Importers are also required to establish repair facilities in all seven regions of Turkey. U.S. exporters are concerned about a decree issued on December 31 which appears to increase service obligations for auto and electronics importers. The government has indicated, however, that this decree will be rescinded.

GOVERNMENT PROCUREMENT

Turkey normally follows competitive bid procedures for domestic, international and multilateral development bank-assigned tenders. U.S. firms sometimes become frustrated over lengthy and complicated bidding/negotiating processes. Military procurement generally requires an offset provision in tender specifications when the estimated tender value exceeds one million dollars. Companies report that Turkey's offset program is one of the most expensive in the world. As military sales graduate from the foreign military sales/ financing program, more U.S. firms are likely to complain about Turkey's offset requirements.

A bilateral tax treaty between the United States and Turkey became effective in January 1998. U.S. bidders for Turkish Government service contracts will benefit thereby through an exemption from a 20 percent withholding tax.

EXPORT SUBSIDIES

Turkey's generous export subsidy programs were reduced in 1995 to meet commitments made to the EU and the WTO. The government still provides cash subsidies to a limited number of agricultural exporters. Domestic producers and exporters can take advantage of a number of state programs designed to support production for domestic and export markets, including cash and credit assistance for research and development projects, environmental projects, participation in trade fairs, market research and establishment of branch offices overseas. Exporters also benefit from export credit schemes and guarantees provided by the Turkish export-import bank.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of a customs union, the Turkish Parliament approved new patent, trademark, and copyright laws. Turkey also acceded to a number of multilateral intellectual property conventions. Although the new laws provide an improved legal framework for protecting intellectual property rights (IPR), they require further amendments to be consistent with the standards contained in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Although Turkish police and courts are steadily gaining experience in enforcing these laws, increased enforcement is necessary in order to have a significant deterrent effect. The government has made efforts to educate businesses, consumers, judges, and prosecutors regarding the implications of the new laws. In 1995, as part of the Customs Union Agreement, the EU agreed to help Turkey set up IPR courts in 12 districts around the country to address education and workload difficulties in the judicial system.

Turkey has been on the Special 301 Priority Watch List since 1992. In the 1997 Special 301 review, USTR provided Turkey with a set of benchmarks necessary in order to improve its status in the 301 process. Out of the six benchmarks, Turkey has made progress on three. Taxes on the showing or foreign and domestic films have been equalized; the Prime Minister issued a circular to all government agencies to legalize the software used in their offices; and a public anti-piracy campaign was begun. Turkey also extended patent protection to pharmaceuticals in 1999. However, the copyright and patent laws are inconsistent with the WTO TRIPs Agreement, penalties for copyright piracy need to be increased, and effective enforcement actions must be taken to address widespread piracy. In April, 1998, the U.S. announced that it will not consider requests to augment Turkey's benefits under the U.S. generalized system of preferences until further progress is made on the benchmarks.

Copyright

The 1995 amendments to Turkey's 1951 copyright law extended the term of copyright protection from 20 to 70 years, protected computer software, increased fines, and abolished previous exemptions to full copyright protection. However, the amended law does not address all of the deficiencies in Turkey's copyright regime.

As a result of a public anti-piracy campaign by the government and Turkish artists and the introduction of banderoles, Turkish consumers are becoming more aware of how and why they should avoiding purchasing pirated works. However, new problem areas are developing, notably in pirated CD video games. Over the last year, the market has grown enormously, fueled by the availability of cheap pirate copies. Turkish police have made three seizures of counterfeit CD videos and staged several raids. In 1998, local importers formed the entertainment software protection alliance to protect their interests in Turkish courts. According to estimates from the International Intellectual Property Alliance (IIPA), U.S. copyright-based industries' losses in Turkey due to piracy were $224 million in 1998.

Patents

On January 1, 1999, Turkey extended patent protection to pharmaceuticals. U.S. officials and R&D-based pharmaceutical firms question whether the law is fully compatible with the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). The law includes several questionable provisions, including the law's broad compulsory licensing provisions, ambiguity concerning whether importation satisfies working requirements, and overly restrictive conditions of patentability for biotechnology inventions. In December

1998, the Turkish patent office issued a regulation intended to clarify that importation constitutes working a patent.

There also is concern that Turkey does not adequately protect test data submitted to regulatory authorities to support applications for marketing approval of pharmaceutical and agricultural chemical products, as required by Article 39.3 of the TRIPs Agreement.

Trademarks

In 1995, Turkey enacted new trademark legislation and acceded to a number of international patent and trademark conventions. Companies report that government enforcement efforts have begun and are more effective in larger cities.

SERVICES BARRIERS

Accounting

Foreigners are not permitted to acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with Turkish accounting firms. Owners, permit owners, and employees of accounting firms established in Turkey cannot acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with foreign firms.

Names of foreign or affiliated firms cannot be used in the legal name of an auditing partnership or corporation, and cannot be used on letterheads and business cards.

Regulations prohibit the formation of partnerships among partners of different levels and titles. Also, qualified non-Turkish auditors are not permitted to practice on an equal basis as a qualified Turkish auditor because of non-recognition of foreign-country professional certification and foreign education, and because of nationality requirements.

Legal Services

The practice of Turkish law and membership of the bar is restricted to Turkish nationals. A person cannot provide legal advice on foreign or international law without being licensed in the practice of Turkish law. Turkish lawyers are not allowed to form partnerships with foreign lawyers.

Architecture and Engineering

The Turkish Government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. Licensing of architects and engineers is limited to Turkish nationals.

Telecommunication Services

State-Owned Turk Telekom currently provides basic telecommunications services, with the exception of two GSM licenses, operated by Turkcell and Telsim, which provide cellular phone service. The Turkish Government is expected to make two further GSM licenses available in 1999. The Turkish Government plans to sell 20 percent of Turk Telekom's shares to a strategic investor in 1999 as part of its privatization drive. A further 15 percent is slated to be sold to current employees, and 14 percent to be placed on international stock markets.

In the WTO negotiations on basic telecommunications services, Turkey made commitments to provide market access and national treatment for all services at the end of 2006, with a 49% limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. Turkish officials have prepared a draft law, which is pending, to accelerate the opening of the market for basic services to 2002. Turkey agreed in its WTO commitments to establish an independent regulatory authority and to make licensing criteria publicly available.

INVESTMENT BARRIERS

Turkey has a liberal investment regime in which foreign investments receive national treatment. The Treasury Under Secretariat screens foreign investment proposals, but this appears to be a routine and non-discriminatory process. Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, telecom services, and maritime transportation.

Foreign investment in the power sector has been slowed by concerns over the projects' legal classification as a "concession," which does not allow access to third party arbitration of commercial disputes under international conditions, a key requirement to obtain international financing. Investors also are concerned about the lack of clarity in the government approval process, lack of lender step-in rights, the lack of lender rights to termination, and disparities in lender and Turkish Government access to force majeure. The Turkish Government has attempted to resolve this through different means, including two laws. Numerous companies have proposed resolutions to the Turkish Government, including legislative and constitutional amendments. However, due to the short tenure of the current government before April general elections, passage by the parliament of any such amendments is unlikely at this time. The two build-operate-transfer (BOT) projects which began operation in January 1999 were only able to do so because they were "grandfathered" in after the constitutional court had ruled the BOT law was unconstitutional. Four of the five companies which won BO projects through a tendering process in 1997 have already signed their contracts and are in the process of putting together financing for their projects. However, the Center to Develop State Enterprises (KIGEM) filed a suit against the build operate law in December which could undermine the entire process. Therefore, the future of the BO projects remains uncertain.

Resolution of concerns in this area offers the single best prospect to increase U.S. trade and investment levels, dwarfing other sectors. The Turkish Government estimates that investments of $3 billion will be necessary each year for the next decade just to meet expected demand for power generation. U.S. Government officials work closely with concerned U.S. companies in order to resolve barriers to investment in this sector.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government "Competition Board" commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcohol and telecommunications services, have been scaled back in recent years, but remain a barrier to certain U.S. products and services.

ELECTRONIC COMMERCE

There are no specific barriers to electronic commerce in Turkey.

OTHER BARRIERS

U.S. companies often state that a significant barrier to increased trade and investment is the comparative lack of political stability in Turkey. With five governments in three years, and the resulting changes in senior government personnel, consensus has been difficult to form on important questions such as the scope and pace of privatization, reform, of social security and banking sector regulations, and how to provide for access to international arbitration for commercial disputes.